obliged to pay what he had received during infancy and except under sections 2 (*d*) and 25 (*b*) if the promissory note had been executed solely on account of what had happened during infancy it would be void for lack of consideration. But here there is consideration, viz., $50, and as the plaintiff has performed his part of the contract and there is no fraud, undue influence or mistake, that is a good contract, except so far as relief may be given under the Usurious Loans Enactment. This seems to me quite clear on principle.

It is not therefore necessary to decide whether advances during infancy may be consideration for a promise on attaining majority, on which there is a great degree of disagreement among the Indian Courts. I think that there is nothing in the Indian Contract Act to exclude them, there is nothing like the Betting and Loans (Infants) Act of 1892.

I think that the case is one which calls for intervention under the Usurious Loans Enactment.

I think that in the circumstances the defendant should repay the $300 actually received with interest from the date of his majority at 12 per cent. and on the sum of $50 with interest since the date of the promissory note at the same rate. The plaintiff is entitled to costs of the action.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

HOWES, J.

July 15, 1940.

TAN KHOO CHOR vs. PUBLIC PROSECUTOR.

[PERAK MAGISTRATE'S CRIMINAL APPEAL No. 71 of 1940]

Customs Enactment (No. 5 of 1936), sections 113 and 117—Criminal Procedure Code (Cap. 6), section 407—False declaration—Forfeiture of goods.

The accused was convicted of signing a false declaration, punishable under section 113 (i) (a) of the Customs Enactment (No. 5 of 1936). The Magistrate ordered the confiscation of the goods concerned.

Held, that the "notification or rule" referred to in section 117 of the Customs Enactment does not include a declaration made by the owner of goods under section 30 of the Enactment.

That section 407 of the Criminal Procedure Code does not contain a general power of forfeiture: that section applies only when a right of forfeiture exists.

And that in the absence of any provision for forfeiture in section 113 of the Customs Enactment, the punishment for offences thereunder stands on a different basis from the punishment under sections which prescribe forfeiture.

Case referred to:—

(1) *Tan Hoon Swee v. The Public Prosecutor* (1927) 6 F.M.S.L.R. 191.

K. C. Chan for appellant.

J. F. Draper, Deputy Public Prosecutor, for respondent.

Howes, J.—I am not satisfied that the Magistrate had any power to make the order for confiscation which he purports to have done under section 117 of the Customs Enactment. That section gives a right to seizure when the person importing, exporting, or removing any goods does so in contravention of the provisions of any notification or rule made under the Enactment, or of any licence issued thereunder.

I cannot understand *Mr. Draper's* argument that the notification in that section would include a declaration made by the owner of the goods under section 30 of the Enactment nor can I accept his argument that section 407 of the Criminal Procedure Code contains a general right of forfeiture. It has been decided by the Court of Appeal in the case of *Tan Hoon Swee v. The Public Prosecutor*[1], that that section only applies when the right of forfeiture exists.

The offence charged in this case was signing a false declaration, punishable under section 113 (i) (a), and the accused has been punished for making that false declaration. There is nothing at the end of section 113 to say that the goods dealt with in contravention of this section are liable to seizure as appears at the end of sections 112 and 117 (ii). I can only assume that the punishment prescribed by section 113 for making the false declaration stands on a separate basis. It does not interfere with the right of the customs authorities to deal with the goods (if they are in fact dutiable goods) in the same way as if they had examined them after the declaration was made. I understand that in the present case the goods were not dutiable.

The appeal is allowed, and the Magistrate's order for confiscation quashed.

Appeal allowed.